



POLICE DEPARTMENT

July 3, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Adam Fridson
Tax Registry No. 936622
Police Service Area 7
Disciplinary Case Nos. 2011-5369 & 2012-6679

The above-named member of the Department appeared before me on February 28, 2013, and April 25, 2013, charged with the following:

Disciplinary Case No. 2011-5369

1. Said Police Officer Adam Fridson, while assigned to the 28th Precinct, on or about March 18, 2011, in [REDACTED] County, New York, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer, while working at Costco, did have his pants unzipped in that his genitals were exposed, and put himself in a position to expose himself to customers in the store, including young children.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT

Disciplinary Case No. 2012-6679

1. Said Police Officer Adam Fridson, while assigned to the 41st Precinct on or about and between March 22, 2010 and July 21, 2010, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, on multiple occasions, did assist and/or request the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Roger Blank, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge in Disciplinary Case No. 2011-5369. He entered a plea of Guilty to the subject charge in Disciplinary Case No. 2012-6679 and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2011-5369

Respondent is found Not Guilty.

Disciplinary Case No. 2012-6679

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Christopher Sharp, Detective James Menton, Victor Preni, and Rance Howard as witnesses.

Sergeant Christopher Sharp

Sergeant Christopher Sharp, an eight-year member of the Department, is currently assigned to the Internal Affairs Bureau (IAB), Group 10, where he has been for two

years. Sharp was promoted to sergeant in January, 2010. Sharp investigates allegations of serious misconduct and criminality. On or about March 30, 2011, Sharp was assigned to investigate a sexual offense allegation against Respondent that had reportedly occurred on March 18, 2011. IAB was notified of the allegation on March 25, 2011. In response to the initial report, the Bronx duty captain, among other investigators, responded to the [REDACTED] Police Department. Sharp conducted a background workup on Respondent. Sharp interviewed Sergeant Ventorino, of the [REDACTED] detective squad, who initially reported the allegation to IAB. Sharp also conferred with the [REDACTED] County District Attorney's Office as to possible criminal charges that were going to be filed. Sharp also had to gather other "intel," which included obtaining video footage from the incident location, which was at Costco, where Respondent was employed off duty.

Person A, who was [REDACTED] old at the time of the occurrence, went to the [REDACTED] Police Department with her parents on March 19, 2011, and reported an incident. Ventorino went to Costco on Respondent's next work date, which was on March 25, 2011, to request that Respondent come down with them to the [REDACTED] Police Department. Ventorino interviewed Respondent from about 8:00 p.m. to about 4:00 a.m. Members of the [REDACTED] police called the duty captain at the Bronx Investigations Unit. Sharp received the original typed complaint form prepared by the [REDACTED] Police Department on or about March 19, 2011, as well as a copy of the video footage from inside of Costco. Detective Brin had responded to Costco and met with one of the assistant managers, Person B. Sharp met with Person B himself. Person B recognized and identified Respondent on the video. When working in the deli section of

Costco, employees must wear some type of partial uniform, which includes a red shirt and possibly a white butcher's coat.

The Department offered into evidence the DVD of the footage inside of Costco (Department's Exhibit (DX) 2). Sharp watched the surveillance video himself. The DVD was played at the trial. The video recorded the alleged incident on March 18, 2011, at approximately 8:01 p.m. The video revealed a woman in black walking, an older girl dancing in the aisle, while a younger girl, who was identified as Person A was pushing the cart. The two girls are sisters, and the older woman is their mother. At approximately 8:02 p.m., Respondent, who was wearing a red shirt and coming from the deli area, walked past Person A and her family, towards the front of the store.

On April 11, 2011, Sharp interviewed Person A in the living room at her residence, with the presence of Detective Menton from the Bronx Special Victims Unit. Menton has a specialty in interviewing children. Person A's mother was present during the interview. Person A told Sharp that she had been with her mother who was grocery shopping. Person A said that, as she pushed a grocery cart and walked through the frozen section aisle towards the rear of the store, she observed someone coming towards her and her sister. Person A told her sister, who was dancing in the aisle, to move. Person A made eye contact with a man, and the man looked down, so Person A looked down, and she observed the man's exposed penis. Person A explained that sometimes when someone made eye contact with you, and he or she wanted you to look at something, he or she would then look at that thing, so then your eyes would automatically follow that point.

During the interview, Person A was cooperative. Person A spoke in a shy, hesitant, and nervous manner. Person A was not able to identify the person who exposed his penis to her. Neither Person A's mother nor father made any statements during the interview. Toward the end of the interview, Person A's father had come home, and stood by the kitchen area. Person A's sister was also in the apartment, but not in the living room. After the interview, Sharp introduced himself to Person A's father. Sharp did not memorialize the interview, nor did he recall Menton taking any notes during the interview. At a later point, Sharp filled out a worksheet that included Person A's statements.

Sharp admitted that Person A did not use the word "penis," when describing the incident, and that that language was "police jargon." Menton asked Person A a baseline question to determine if she could identify what was a lie or not; he asked if she knew the difference between "in and out."

After the interview, Sharp reconferred with the [REDACTED] Police Department and the [REDACTED] County District Attorney's Office. Sharp further requested a character assessment and any intelligence that they could get from IAB. Sharp interviewed the general and assistant managers at Costco to gain information about Respondent's employment. Sharp reviewed Respondent's work history for the weeks of March 18 and 25, 2011. Respondent was working on March 18, 2011. Respondent had been authorized to work at Costco off duty.

Sharp learned from Costco that they were not going to fire Respondent but he was "separated from payroll." Respondent never returned to Costco after the commencement

of the investigation against him. Respondent's attorney stipulated that March 25, 2011 was Respondent's last date of employment at Costco.

Sharp did not know of any criminal prosecution that took place against Respondent. Without a positive identification from Person A, the [REDACTED] County District Attorney's Office was not willing to prosecute.

During cross-examination, Sharp admitted that Person A could not identify Respondent in a photographic array. Officer Howard, who filled out the complaint form in the [REDACTED] Police Department, was unable to observe in the videotape the behavior of which Respondent is accused. Sharp said that he did not confer with Howard; he only conferred with detectives from the [REDACTED] Police Department. When asked if the detectives acknowledged not seeing in the videotape the behavior of which Respondent is accused, Sharp said, "They never told me they did not see it." Sharp had never been assigned to the Special Victims Unit. Sharp agreed that he was unaware of the conversations, if any, that Person A had with her parents or sister over a course of the three weeks prior to being interviewed by the police. Sharp agreed that different information could be conveyed according to when an interview took place. Sharp has no children himself but has nieces and nephews.

When walking into the living room of Person A's home, Sharp observed a couch, a table, and a dining table a few feet away that was against the wall. When Sharp and Menton arrived, they greeted Person A's mother. Person A did not appear to be surprised to see the police. When the interview started, Person A's mother did not interject in the conversation. Sharp could not recall the actual words Person A used to describe the penis. Sharp did not know the age of Person A's older sister. Sharp did

not know the source of Person A's knowledge as to how she knew what a penis was. Sharp thinks that Menton inquired as to whether Respondent's penis was erect or not, but Person A did not understand the difference between erect and not erect.

As part of the IAB investigation, Respondent was subjected to three integrity tests. Two of the integrity tests involved a young-looking, female, undercover officer dressed up as a school girl. Sharp said that during surveillance, they observed Respondent slowing down to look at certain women. For one integrity test, Sharp took it as a positive that they observed Respondent glancing at their target. However, when further pressed that the three targeted tests were deemed a "pass" in the closing report. Sharp admitted that they might have said a pass because Respondent did not have any interaction with the women. Sharp acknowledged that to look at an individual is not deemed improper.

Person A was hesitant and intimidated as a result of the alleged incident. Person A had told her older sister about the incident, who then told their mother. Sharp never asked Person A's mother if Person A had exhibited a change in demeanor prior to the mother learning about the incident. Person A's father was visibly upset and was concerned about his daughter. Sharp did not know if there were other family members in the immediate family.

Upon further examination, Sharp described Person A as shy and she appeared to be embarrassed about what she was saying. Sharp assessed Person A to be smart and articulate, especially in the way she explained the eye contact she had with Respondent. Sharp evaluated Person A to be telling the truth. Person A was stoic when she explained the incident, and at no time did she cry. Sharp and Menton were in

the apartment conducting the interview for approximately 20-25 minutes. They did not make any type of recording of the interview with Person A. Sharp stated, “[W]e made the decision beforehand not to tape a nine-year-old because of her age.” Sharp did not know how the [REDACTED] Police Department contacted Person A’s father to ask him to come down with Person A to view the photographic array. The [REDACTED] Police Department conducted their own investigation.

During recross-examination, Sharp again acknowledged that he thought Person A was credible. Prior to getting to the interview, Sharp had conferred with his captain and Menton, and they decided that they would not record the interview with Person A. Sharp explained that in IAB, not all conversations are recorded, depending on the matter, who was being interviewed, and the time and place of the interview. Sharp was not aware of exactly when the [REDACTED] District Attorney’s Office decided not to press criminal charges.

Detective James Menton

Detective James Menton, a 15-year member of the Department, is currently assigned to the Bronx Special Victims Unit (SVU). Menton has been assigned to SVU for almost ten years. As a detective in SVU, Menton investigates sexual assault cases involving children and adults. Menton has worked with over one hundred children in his ten-year experience. Menton has taken special training courses in forensic-type interviews with children. From that type of interview, an investigator can use tactics to determine whether a child is being credible or not, and swearable or not. “Swearable” means whether a person’s testimony would be deemed truthful in a court, through the

eyes of a judge and jury. To determine the swearability of a child, Menton would ask the child if he knew the difference between the truth and lying, and the consequence of what would happen if he, in fact, lied. To determine credibility, Menton also evaluates whether someone's story is consistent with any other evidence, such as video surveillance, and whether the video was consistent with the time, place, and location of what that person said happened. Menton does not generally use demeanor to determine credibility in children as each child's demeanor can vary. If a child has a physical injury, Menton would interview that child at a hospital. Each situation is unique but generally, Menton tries to interview a child alone, without his or her parents present. Sometimes a parent might be present, especially if a child is very scared. Some children speak openly without a guardian present, and some need a guardian in order for them to speak, but either way is fine with Menton. Menton instructs the parents who are present during the interview to refrain from saying anything until the interview is completed.

IAB asked Menton to assist in the investigation of Respondent. Before interviewing Person A, Menton reviewed the Costco surveillance video. Menton did not memorialize or document his involvement in the case because it was an IAB case and the criminal case did not occur in New York City's jurisdiction.

On April 11, 2011, Menton went to Person A's home in [REDACTED] with an IAB sergeant (Sharp). Menton introduced himself to Person A and her mother. Menton asked Person A several questions to determine if she was a swearable witness. Person A told Menton that she had been in a Costco in [REDACTED], and she observed a male walk up to her, motion for her to look down, and when she did, she observed this male's "private part." Person A did not "use the word penis or anything like that, but

she observed his private – a male private part out, exposed.” To determine her swearability, Menton asked Person A a series of questions to know whether she knew the difference between a truth and a lie, and the consequences if she were to lie.

Person A knew all of her body parts. Additionally, Person A was nine years old and “a nine-year-old should be swearable.” Menton deemed Person A to be swearable.

Menton pointed to a variety of body parts to see what parts Person A knew. When Menton pointed to the groin area (unclear whose area), Menton could not recall exactly what Person A responded, but that it was a “private part” of a person. And when Menton asked Person A if she knew what the private part was called for a male, Menton could not remember her saying that she knew, but she continued to call it a “private part.” The IAB sergeant (Sharp) and Person A’s mother were in the room. Menton had trouble recalling if he met Person A’s father but he believed he did, but he could not recall if the father was in the room during the interview. Menton questioned Person A mostly, but did not memorialize any of the questions that he asked, or answers that he received. Person A’s mother did not speak during the interview. Menton could not recall if Person A’s father spoke at all or if they even had any interaction.

Menton asked Person A the difference between being inside of the pants and outside of the pants. Menton asked her if the “private part” that she saw in Costco was inside or outside of the man’s pants, to which she stated that it was outside. Person A was upset and visibly crying. Menton felt extremely sad for Person A and felt that even though she was not physically assaulted, she was very traumatized by the incident. Menton asked Person A if the man’s penis was hard or soft, but she did not know the

difference. In most cases that question is asked when the incident involved physical contact.

The interview took place a little less than one month after the incident in question. Menton did not take into account the timeframe from when the incident occurred to when the interview took place in determining Person A's credibility because each victim is different as to when he or she discloses a traumatic incident. Menton found that Person A's recollection of what happened was "amazing" as it was one hundred percent consistent with what he observed in the video. The interview was about five to ten minutes long.

During cross-examination, Menton acknowledged that the interview took place approximately two years prior to his court testimony and that he did not memorialize the interview. Furthermore, there was no recording taken of Person A during her interview. Over the past two years, Menton had less than 25 cases involving children as he had been assigned to a special unit dealing with DNA technology within New York City. Menton did not know that Person A was unable to identify Respondent from a photograph as he was not part of that part of the case. Menton remembered the case at-issue "very well" because of how credible Person A was and how upset Menton was to learn that the person in the video was a New York City police officer. Menton testified that he observed what appeared to be Respondent's penis exposed on the videotape. Menton did not confer with members of the [REDACTED] Police Department regarding the case. Menton did not find it surprising if the [REDACTED] police officers did not observe Respondent's penis to be exposed on the videotape. Menton stated, "[T]o me it looked like his penis and it was consistent with what the victim stated." Menton was not certain

that the [REDACTED] police observed the same video that he observed, and that he would have to speak to them to clarify. Menton then testified that assuming that he and a [REDACTED] police officer were sitting in the same room and watching the same videotape and the officer did not find Respondent's penis to be exposed, Menton would be surprised.

Menton testified that from what he remembered, they first tried to interview Person A alone, but they were not "a hundred percent successful," so they then allowed her mother to be present. Menton testified that he could try to speak to a victim like her one hundred times but she would still not speak because Person A was extremely shy and scared. Menton claimed that he was not trained to get a child "to get over that." Instead, Menton testified that Person A was very frightened to speak at all when her mother was not present. Many times, investigators ask to speak to child victims alone because they are scared to speak the truth in front of their mothers or fathers. Here, Menton believed that Person A was frightened to speak because a male had exposed his penis and the last thing that she wanted was to be alone with another adult male, so he had no problem with the mother being present in the interview. This was Menton's interpretation of Person A's reluctance to speak to him, as she never stated this herself.

Prior to going to the interview, Menton was aware that he was dealing with an underage female victim. Menton felt that it was never necessary to have a female special victims detective assigned to the case or present for the interview, and that, in his ten-year experience, females tend to speak more to men than women. Yet, at the same time, Menton testified that, in his opinion, the last thing this complainant wanted was to be alone with a male, or any adult, and that she wanted a guardian present. Menton agreed that children can be fearful of displeasing their parents.

Menton thinks that Person A referred to Respondent's private area as "his private," which Menton indicated is a common phrase used by children. Menton was not able to determine how she knew what a male's private part was prior to observing it. Menton did not have Person A describe the private part. When Menton observed the Costco videotape, Menton believed Respondent's penis was erect. Menton did not agree that it would have been important for Person A to have described what she observed to be a "private part," and instead testified that "[a] private part is a private part, whether it's erect or soft." And, Person A did not know the difference between erect or soft. Menton observed that Respondent's erect penis appeared to be sticking out of his pants. Menton could not tell whether Respondent had underwear on. Menton could not tell how far Respondent's penis was sticking out. Menton was not aware of how Person A's mother became aware of the allegation against Respondent. Menton did not ask Person A's mother whether there was a change in Person A's disposition or not on the day of the incident.

Menton agreed that an interrogator had to be careful as to the suggestiveness of the question because children could respond in a way to please the questioner. Menton was not trained to determine if one child's answer was influenced by another child, but agreed that children could be easily influenced. Menton was unaware of any outside conversations that Person A had with other parties regarding the incident. Menton could not recall if Person A's mother cried during the interview.

Upon further questioning, Menton testified that as an interviewer, he could pick up whether a child has been coached. When Menton conducts his interviews, he does not lead the victim to answer in a specific way, and he lets the victim tell her story by asking,

“What happened?” In this particular case, Menton did not ask Person A if someone exposed his penis to her. Person A knew the English language perfectly, but she was visibly upset and shaking. Person A had difficulty talking about the incident, which did not surprise Menton at all. She did get to a point where she was able to describe what happened to her at Costco without breaking down. When Person A relayed that Respondent had brought his eyes down to the groin area, she physically acted it out and brought her own eyes down towards Respondent’s private area. The video was “amazingly alike” to what Person A said, and that was why he found her “extremely credible.” When conducting the interview, Menton was sitting at a table in the living room, Person A was sitting in front of him, and Person A’s parents were standing to his left in the same room.

On recross-examination, Menton testified that he vaguely remembered the father being in the room but he believed that he was standing with the mother in the room. The parents were standing to Menton’s and Person A’s left, about five to ten feet away. Again, Menton could not recall if the father was even present, or if he said anything.

Detective Victor Preni

Preni has been a member of the [REDACTED] Police Department for 13 years, and has worked as a detective in the Major Cases Unit for four-and-a-half years.

Preni spoke with Person A on March 20, 2011 at his office, with Person A’s mother and father present. At this interview, Person A told Preni that while she was shopping at Costco with her sister and mother, a man walked toward her with a white coat draped over his arm. Person A said that when the man got closer, he moved the

coat and Person A observed what she believed to be his "private parts." As the man passed, he covered himself back up with the coat and continued walking by. Person A told Preni that "she didn't look up; she just saw it and looked away." Preni recalls Person A describing the man as a "white or Hispanic male wearing jeans and a red shirt, [a] red Costco shirt."

Preni prepared a report of the incident, and showed it to Person A along with a photograph of Respondent. At that time, Person A was unable to identify Respondent from the photograph. Preni recalled that Person A's mother and father did not make any statements during the interview. Preni described Person A's demeanor as "shaken, visibly upset" and said that "she broke down crying at some point."

Preni explained that Respondent became a suspect in the case because Police Officer Rance Howard, of the [REDACTED] Police Department, conferred with Costco employees who identified Respondent from security camera footage that showed Person A at the time of the incident. Preni watched the same footage and saw a man walk by Person A with a coat in his hands. As the man in the video approached Person A, he moved the coat, and then returned it to its original position as he passed by. Preni did not see the man's penis exposed in the video. Preni watched the video again at Costco with "one of the store's security people, Person B," who identified the employee in the video as Respondent.

Preni and his partner, Detective Farina, interviewed Respondent at the Detective Division interview room on March 25, 2011. Prior to the interview, Preni was aware that Respondent was a member of the Department. No one else was present during the interview. Preni asked Respondent what happened during the incident and if he exposed

himself to Person A. Preni told Respondent that there was a video of the incident, but Preni did not have a copy of the video at the interview. Respondent denied exposing himself, and told Preni that the pair of jeans that he wears all the time had a broken zipper that "comes open while he's working throughout the night."

After the interview with Respondent, Preni conferred with the bureau chief in the [REDACTED] County District Attorney's Office. The bureau chief explained that there was not enough evidence to proceed with a prosecution. At that time, Preni considered the case "inactive," meaning that "unless new evidence or information comes forward, [he wouldn't] be proceeding forward with the arrest or prosecution of the case."

On March 7, 2013, Preni prepared a report on the investigation. When asked why the report was prepared almost two years later, Preni explained that he will keep an investigation open in case "a witness or evidence comes forward." In this instance, Preni recalls that the investigation stayed open "a little longer than expected" because it was "very busy" in 2012. However, Preni characterized the time this investigation stayed open as "fairly common" practice within the [REDACTED] Police Department. To prepare the report, Preni referred to his notes and the patrol report.

During cross-examination, Preni clarified that while the alleged act took place at about 8:00 p.m., the "time of incident" in his report is 1:36 p.m., which is the time that the incident was reported to the police. Preni explained that the [REDACTED] Police Department report always uses the date and time that the incident was reported to police as the "time of incident." Preni explained that the time of incident was not equivalent to the time of occurrence, and that there is no box on the report for the time the alleged act

occurred. The “date of incident” on the report would also be the date that the report is being made to the police, and not necessarily the date that the incident occurred.

During the investigation, Person A’s father had to reschedule a visit to the Detective Division during which Person A was to view a photo array. When asked whether Preni, as a fellow parent, would have delayed the investigation if it involved his child, Preni said that he did not know the circumstances of Person A’s father’s delay, and that it is “very common that people don’t come to see us at that moment; they do come to see us the following day or at a later time.”

Preni conceded that he did not know what conversations Person A had with her parents prior to speaking with the police. Preni’s interviews were not recorded, but Preni’s report memorialized what Person A said in sum and substance. Preni testified that he does not usually ask “suggestive questions,” and does not believe he did in this case. Preni recalls that during his conversation with Person A, Person A’s parents were sitting in a chair next to her, and her sister was outside in the waiting area. Preni did speak with Person A’s parents alone before bringing Person A in, and asked Person A “basically what happened” based upon his conversation with Person A’s parents.

When Person A said she saw “private parts,” Preni did not ask her to describe what she saw, nor did he ask how Person A knew what a male’s private parts were. He indicated that she did not use the term “penis.” Preni recalls that she “was breaking down crying at that point so I did not press her.” He “felt comfortable that she meant his penis,” and did not inquire further. He agreed that these would be legitimate questions to ask Person A, but that “at that point [he] felt comfortable with what she told [him].”

During his interview, Preni did not recall whether Person A told him that she made eye contact with Respondent and followed his gaze down.

Preni agreed that on the video, Person A's older sister's demeanor did not change as Respondent passed her in the aisle. Both before and after the incident, she was dancing around the aisle. Preni did not observe a change in Person A's demeanor in the video, either.

On redirect examination, Preni testified that he did speak with Person A's older sister on March 20, 2011. Person A's older sister told Preni that she did see a man with a white coat with his arm stretched, but she did not see anything else because she was not facing the man.

Upon further examination, Preni did not recall how long his interview with Person A lasted. Preni has had a few cases of sexual allegations involving children, but "not a lot of experience." Preni described Person A as a "bright girl" who seemed to understand his questions during their interview. Preni recalls that Person A broke down and cried when she told him that she had seen the man's private parts.

Police Officer Rance Howard

Howard has been a member of [REDACTED] Police Department for 16 years and works in the [REDACTED] Precinct.

Howard received a call on March 19, 2011 at 1:36 p.m. to respond to Costco on a "past sex abuse or a sex offense." Howard took a report from Person A's father that a man in Costco had shown his penis to Person A the night before, sometime between 8:00 p.m. and 8:30 p.m. Howard then met with the store security officer to review a tape

of the incident captured on the store's security camera. Upon reviewing the tape, Howard saw a man with a white coat draped over his arm. As the man walked past Person A, Person A's sister, and Person A's mother, he "moved the coat to the side." Howard saw that Person A "looked at the gentleman" as he walked past in the video. The Costco security officer who showed Howard the footage identified the man as Respondent. The store manager told Howard that he believed Respondent was a police officer in this Department. Howard recalled that he may have briefly spoken with Person A and Person A's mother, but he was mostly interested in speaking with Person A's father, the Costco security officer, and the store manager.

Howard forwarded his report and a copy of the security video to the Detective Division. He did not show photographs of Respondent or anyone else to Person A because "that's what the detectives would do." Howard did tell Person A's father that he would have to report to the Detective Division so that Person A could view photos. Howard said to Person A's father that he "would like them to go down right then and there," but Person A's father said that he could not and would respond back the following day "around noontime."

Howard believed that Person A used the term "private parts," rather than "penis," when describing the incident. Howard believed that Person A's father used the term "penis" when saying that Person A saw Respondent's penis. Howard also recalled that Person A described the man as "a male wearing blue jeans" with "a red shirt" and that he had a "long white jacket." Howard testified that Person A never used the term "butcher's coat," but Person A's father "could have."

During cross-examination, Howard clarified that when he viewed the videotape at Costco, only Howard and the Costco security officer were in the room. Howard viewed the videotape at Costco after speaking with Person A's father. Howard did not recall whether Person A's father ever mentioned the butcher's jacket.

Howard was not present when Person A was shown the photo array, but remembers learning after the fact that she could not identify Respondent from the array. Howard also testified that Person A described the man in the incident as "white or Hispanic" and that there were four other people of Hispanic background working in the deli department on the night of the incident.

Howard testified that he was not aware of any conversations between Person A and her family in the less than 24 hours between the incident and the time of the police report. Howard described Person A's demeanor at Costco as "clearly upset." When Howard spoke to Person A, he asked her what happened. Howard recalls that he did not ask Person A to describe the "private parts" she saw, but she "pointed down to his waist – to the waist" and said "his private parts." Howard clarified that he did not see the man's penis while reviewing the tape himself.

Upon further examination, Howard described the closeness of the video as "kind of far away," though he could make out faces on the tape. Howard does not recall any kind of zoom option when viewing the tape in the Costco office. Howard recalls that Person A spoke to him "directly," and did not receive any help from her parents. Howard recalled being "amazed" at Person A's ability to recall the incident in detail, and that Person A's version was "exactly what [he] saw" in the video.

On recross-examination, Howard testified that it “depends on a lot of factors” whether someone might be able to see a light-skinned man’s penis against the darker background of his pants. Howard clarified that he did not recall seeing “what looked like a penis” in the video, based on his recollection from seeing the video two years prior.

On redirect examination, Howard recalled that the security camera did not provide “a good angle,” and that he did not see a “frontal picture” of the man in the aisle with Person A.

On recross-examination, Howard did not recall Person A saying whether Respondent made eye contact with her during the incident and that she followed his gaze downward.

Respondent’s Case

Respondent testified in his own behalf.

Respondent

Respondent has been a member of the Department for eight years. He is [REDACTED] with [REDACTED]: a [REDACTED].

Respondent testified that on four occasions in March, May, June, and July of 2010, he assisted efforts to have summonses resolved favorably by contacting his union delegate, Police Officer Chris Manzi. Respondent recognizes that his actions were wrong and that “[i]t won’t happen again.”

On the fifth occasion, June 25, 2010, a retired member of the service (MOS) asked Respondent to help him take care of a summons, and Respondent called Manzi to

connect the two of them. Respondent told the retired MOS that "he would have to talk to the delegate." On that occasion, Respondent's involvement in fixing the ticket ended after he "called [Manzi] upstairs on his cell phone and asked him to come down."

Respondent also testified that on March 18, 2011, he was working at his off-duty employment at Costco Wholesale in [REDACTED]. He has several responsibilities, but that night he was working in the deli department. Respondent described the deli department as "a very messy area." Respondent does not have a uniform at Costco, but does wear the same pair of jeans every day along with a red Costco "work shirt." This shirt is always tucked out, and is long enough to fall below his rear pocket. Respondent tries to wear the same pair of pants because he was "tired of replacing pants all the time from [Costco] putting [him] in the deli area." He described the pants as "very worn, stained, ripped." Respondent testified that he also wears a white "butcher's coat" when going to and from the freezer area. Depending on the time of day, Respondent would also wear a "red smock on top of that." Respondent explained that if he is cleaning up or handling raw chicken, he would wear the smock on top of all his clothes, including the white coat, in order to keep clean. Respondent also testified that he would wear a white T-shirt under his work shirt, as well as "boxer brief" underwear each day.

Respondent admitted that he was the man in the video of the alleged incident on March 18, 2011. After watching the video several times, Respondent believes that he was leaving the deli area after "washing something." Because the coats and smocks are worn by several employees, rather than individually issued, Respondent believes that he was crossing the store to find a smock while he unrolled the sleeves of the white coat that

he had in his arms as he walked. Towards the end of the tape, Respondent saw himself again; he was wearing both the white coat and red smock.

Respondent said that on the evening of the incident, he did not recall "seeing the victim at all." He denied making eye contact with the victim, and denied exposing himself in any manner to Person A. Respondent explained that his work pants were "damaged in a lot of ways," and that the zipper works, but is visible since the "jean part that went in front of it was more towards the side from wearing it every day." However, this did not concern Respondent because he wore his shirts long and untucked in case he carried his firearm from work. Respondent testified that his red Costco shirt falls below the zipper of his pants. Respondent also testified that the white coat and red smocks each fall below his knees when he wears them. Respondent does not believe that there was any way his penis could have been accidentally out of his pants.

Respondent testified that when he was interviewed by the [REDACTED] Police Department, he in no way admitted to these allegations. Respondent believed that no criminal charges were filed against him for this incident.

During cross-examination, Respondent confirmed that his off-duty employment at Costco was authorized by the Department. However, March 25, 2011 was his last day working there, the same day he was interviewed by the [REDACTED] Police Department regarding this incident.

Respondent explained that on March 18, 2011, Respondent worked a day tour at the 41 Precinct, and reported to work at Costco at about 5:00 p.m. or 6:00 p.m. At about 8:00 p.m., Respondent was heading towards the deli department, but could not recall his exact duties in the store that day prior to 8:00 p.m. Respondent testified that the red

smocks were mostly used for cleanup, which started at about 8:30 p.m. Respondent said that he usually would not wear a smock "on the floor" of the store. However, Respondent clarified that "each day is different." If cleanup started early or another employee left a messy task for him at the beginning of his shift, Respondent might need a smock before 8:30 p.m. Respondent also explained that there were only about five aprons for the whole store, and that they would be hung from hooks in the bakery, food court, deli, or meat departments. Respondent recalled that he was the only person assigned to the deli that night, but he believed there was probably at least one other employee working at the nearby meat department.

Respondent recalls watching the surveillance video of the incident in February 2013. Upon watching the video again, Respondent observed that he appeared to walk into the back area of the deli through a doorway on the right portion of the screen. Respondent confirmed that there were no other Costco employees in the area at that time. Respondent also confirmed that about five to fifteen seconds later he emerged from the back area of the deli carrying a white coat over his right arm. Respondent testified that he is left-handed. In the video, as Respondent approached the bottom-left portion of the screen, at some point he transferred the coat from his right hand to his left hand. Respondent testified that he saw himself on the video trying to unroll the sleeves, which a previous wearer of the coat rolled up.

When Respondent was interviewed by the [REDACTED] Police Department, Respondent recalled telling the interviewer that the zipper on his pants was defective. When Respondent was given an official Department interview on June 12, 2012, he told IAB that he had told the [REDACTED] Police Department that "it wasn't me," and "it could

have been that I changed there or my zipper was down but I didn't answer any other questions like that." Respondent explained that these answers in the official Department interview were given "as an explanation," and that he didn't "admit to anything" in his previous interview with the [REDACTED] Police Department. When asked whether Respondent, in his official Department interview, had told the [REDACTED] Police Department that sometimes his zipper would fall down and he would have to pull it up again, Respondent said "I believe I told them that the zipper was defective, I don't know."

Respondent recalled that he had worked at the Costco in [REDACTED] since 1999. Respondent denied ever having met or had any argument or conflict with Person A or Person A's father, mother, or sister.

When asked about the tickets that Respondent had "fixed" in 2010, Respondent denied having any contact with the Bronx County District Attorney's Office regarding that matter. Respondent was not aware that Manzi had been arrested in connection with fixing summonses, since he "didn't keep in touch with anyone from the 41" Precinct. During his official Department interview, Respondent had listened to the wiretap recordings of himself and Manzi discussing fixing summonses. Respondent clarified that the incident in July of 2010 involved a summons issued to Respondent's wife's employer. Respondent admitted to contacting Manzi to ask him to take care of that summons. Respondent testified that he never heard from his wife whether the summons actually had been favorably adjudicated as a result of asking Manzi for help.

Respondent denied asking Manzi to take care of a summons for a retired MOS who had come to the 41 Precinct asking for help. In that instance, Respondent clarified

that he only called Manzi, who was in the precinct, to ask him to come downstairs because "[there was] a retired MOS that [had] a question."

Respondent explained that on the three occasions in March, May, and June 2010 that he spoke to Manzi about taking care of summonses, Respondent took care of those summonses at Manzi's request. Those conversations involved multiple summonses issued to various individuals. Respondent testified that he took care of these summonses because Manzi was "a delegate and a senior officer."

On redirect examination, Respondent recalled that he discussed his zipper accidentally coming down in his official Department interview. Specifically, Respondent told IAB that the zipper would fall down from being old or worn all the time and not being washed. Respondent clarified that the questions in his official Department interview were directed at what happened during the incident, not at what he had told the [REDACTED] Police Department.

On recross-examination, Respondent further clarified that some of the questions in his official Department interview did concern his conversations with the Yonkers Police Department. Respondent confirmed that the portion of the transcript of his official Department interview read during cross-examination did relate to Respondent's conversation with the [REDACTED] Police Department.

Upon further examination, Respondent confirmed that he was never arrested or charged with any crimes for either the incident in [REDACTED] or his involvement with the summonses. Respondent also clarified that he had two official Department interviews, one regarding the incident in [REDACTED] and the other regarding the summonses. The two interviews involved separate IAB personnel. Respondent also testified that at no point

did he recall having his penis exposed at Costco. Respondent always had underwear on, and his red polo shirt went below his waist. Respondent has “never felt that [he] needed to – put [himself] in a position to expose anyone.” Respondent also testified that there were two bathrooms at Costco, one in the back near the loading dock and one near the front of the store that is used by both customers and staff. Neither restroom was near the deli department.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2011-5369

Specification No.1

Respondent stands charged herein in that while assigned to the 28th Precinct, on or about March 18, 2011, in [REDACTED] County, New York, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said officer, while working at Costco, did have his pants unzipped in that his genitals were exposed, and put himself in a position to expose himself to customers in the store, including young children.

Person A did not testify in this proceeding. She and her mother did not appear at trial subsequent to subpoenas issued by the Department Advocate’s Office (DX 1). Evidence adduced at trial established that Person A, nine years old at the time of the incident, went to the Yonkers Police Department along with her parents to report an incident. She was interviewed on April 11, 2011 and stated that she was shopping with her mother and sister in Costco. Her mother was shopping, her sister was dancing in the aisle at the time and she was pushing the shopping cart when she made eye

contact with a man in the store. When the man looked down, she looked down and observed the man's exposed penis.

Person A was interviewed at her home. Her mother was in the room and the interview was conducted by Sergeant Christopher Sharp of IAB Group 10 and Detective James Menton of the Bronx Special Victims Unit. Sharp was the investigator assigned to the case and he used Menton as an expert to conduct the actual interview of Person A. It was determined that neither Sharp nor Menton recorded or memorialized what Person A said during her interview. Sharp acknowledged that Person A did not use the word "penis" during her interview. Person A was unable to identify anyone in a photographic array, and as such, the [REDACTED] County District Attorney's Office declined to prosecute the case.

A videotape from Costco was secured during the investigation (DX 2). Although Respondent was identified as the male who passed Person A in the video, Police Officer Howard, of the [REDACTED] Police Department, who filled out the complaint form, was unable to observe the misconduct alleged against Respondent in the video. Menton, however, testified before this Court that prior to trial he observed the videotape and saw Respondent's exposed penis.¹

Menton further testified before this Court that when he questioned Person A, she used the term "private part" to refer to what she observed. She was questioned as to whether the private part was inside or outside of the pants, and she said that it was outside. Menton said he asked her if the private part was hard or soft, but she did not

¹ It must be noted that the Assistant Department Advocate in her closing remarks said that the observations made by Menton of seeing Respondent's exposed penis in the video was not shared by the Department and that he was mistaken.

know the difference. Menton testified that he found Person A to be swearable as a witness.

This Court found several discrepancies with the testimony of Menton. For one, Menton testified that when he questioned Person A, she was upset and crying during the interview. On the other hand, Sharp, who was present during the same interview, testified that Person A was very intelligent and testified in a “stoic” manner. In addition, Menton testified that he remembered this case because it involved an allegation of sexual abuse by a New York City police officer. Yet Menton also testified that he handled a little less than 25 cases in the past two years involving children since he was later assigned to handle DNA cases. Given the lapse of two years from the incident to the time Menton testified, the Court finds it hard to believe that Menton would remember everything said by Person A with accuracy without the aid of notes or a recording to refresh his recollection. In addition, Menton testified that he did not ask Person A to describe the private part that she observed.

This Court is left with several unanswered questions. Did Person A see a naked penis? Was Respondent’s zipper down and she observed the “private part” covered by underwear in his pants? Was the private part outside of the underwear? Was there underwear worn by Respondent at all? Given the fact that these questions could not be answered by the examination conducted of Person A, this Court is left with insufficient evidence to make a finding based on the credible evidence that Respondent had his pants unzipped, exposing his genitals and put himself in a position to expose himself to customers in the store. Given the fact that this case was presented as a hearsay case and

Person A did not testify, the Court was unable to get answers to these most serious questions.

More importantly, this Court reviewed the Costco video several times and was unable to make a determination that Respondent had his penis exposed during the incident with Person A, as Menton testified to. The Court reviewed the video several times. It was reviewed on a small screen as well as on a large screen. It was reviewed several times in forward and backward motion. At no point did it appear that Respondent even took notice of Person A. He came from the back room of Costco's deli department and proceeded past the aisles of food and never changed the pace at which he walked. At no point could this Court observe an exposed penis. Although the Court did notice Respondent changing the position of his butcher coat in his hand, he appeared to change hands when he passed Person A's older sister who was dancing in the aisle in the area Respondent was traveling. Once he changed the coat position from his right hand to his left, it appeared to obstruct a view of his lower area by Person A who was standing on his left-hand side.

Accordingly, Respondent is found Not Guilty of Specification No. 1 in
Disciplinary Case No. 2011-5369.

Disciplinary Case No. 2012-6679
Specification No.1

Respondent stands charged herein in that while assigned to the 41st Precinct on or about and between March 22, 2010 and July 21, 2010, he did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, on multiple occasions, did assist and/or request the assistance of other

members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals.

Respondent pleaded Guilty to this Specification. Respondent acknowledged that in July of 2010, he contacted Manzi to take care of a summons that Respondent's [REDACTED] employer had received. He also acknowledged that on three occasions in March, May and June 2010, he spoke to Manzi, and that he fixed multiple summonses to various individuals at Manzi's request. With respect to taking care of a summons for a retired MOS, Respondent stated that he called Manzi, who was in the station house, to come and help the retired MOS who had a question.

It is clear that Respondent on at least four occasions assisted in the prevention of the processing of multiple summonses issued to various individuals.

Accordingly, having pleaded Guilty, Respondent is found Guilty of Specification No. 1 in Disciplinary Case No. 2012-6679.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has pleaded Guilty to on multiple occasions, assisting and/or requesting the assistance of other members of the service to prevent the processing and adjudication of multiple summonses issued to various individuals. Although an exact

number of the summonses involved could not be ascertained, it was clear that this case involved more than four summonses. It is also noted that Respondent was not arrested or suspended in either disciplinary matter.

In Disciplinary Case No. 2011-5763 (August 28, 2012), a 19-year police officer with one prior adjudication negotiated a penalty of five suspension days without pay, 25 vacation days, one-year dismissal probation, and payment of a fine in the amount of \$500.00 for assisting and/or requesting the assistance of other members of the service to prevent the processing and adjudication of numerous summonses issued to various individuals on several occasions. A similar result occurred in Disciplinary Case No. 2012-6730 (June 20, 2012) with a 20-year police officer, and in Disciplinary Case No. 2011-6259 (February 8, 2012) with a 31-year police officer.

It must be noted that the above-mentioned cases are the result of negotiated settlements. However, pursuant to the Administrative Code, that exact penalty cannot be imposed with respect to the single specification in this case, and in light of the seriousness of that charge, this Court recommends that Respondent be DISMISSED from the New York City Police Department, but that the penalty of dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that Respondent be suspended for a period of 30 days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED
JUL 23 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ADAM FRIDSON
TAX REGISTRY NO. 936622
DISCIPLINARY CASE NOS. 2011-5369 & 2012-6679

In 2010, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluation. In 2011 and 2012, he received a rating of 3.5 “Above Competent.” Respondent has received one Excellent Police Duty Medal in his career to date.

[REDACTED]

[REDACTED]

On March 22, 2010, Respondent received Charges and Specifications for engaging in off-duty employment at Costco Corporation without approval, engaging in off-duty employment in excess of 20 hours a week without authorization, engaging in a verbal traffic altercation, being absent from assignment on 13 occasions, causing false entries to be made in Department records on 12 occasions by falsely signing out at scheduled end of tour, and failing to sign out at the completion of his tour. Respondent was found Guilty of all charges and forfeited 45 vacation days.

On May 20, 2010, Respondent was placed in Level II Discipline Monitoring based on his overall record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials